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AUG 27 2007

OFFICE OF PETITIONS

In re Application of
Stilgenbauer
Application No. 10/649,478
Filed: August 26, 2003
Title: Turbine Unit and VTG Mechanism
Therefor

ON PETITION

This is a decision on the petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed March 16, 2007. In the alternative petitioner has requested the petition be treated under 37 CFR 1.137(b).

The petition to withdraw the holding of abandonment is **Dismissed**.

The petition to revive under 37 CFR 1.137(b) is **Granted**.

This above-identified application became abandoned for failure to timely file a reply to the non-final Office Action of March 12, 2004. The non-final Office Action set a three (3) month shortened statutory period for reply. No extensions of time were obtained under the provisions of 37 CFR §1.136(a). Accordingly, this application became abandoned on June 13, 2004. A Notice of Abandonment was mailed on October 15, 2004.

Petitioner contends the Office action was received by the assignee who in turn forwarded the action to assignee's legal representative. The action was then improperly docketed by the secretary at Pendorf & Cutliff. The docketing error was not discovered until September 12, 2004. Thereafter, attorney Pendorf relocated to a different firm which resulted in the above-identified application's file being misplaced.

Petitioner's argument has been considered but it is not convincing to establish the holding of abandonment should be withdrawn. Petitioner does not contend that the Office action was not received or that a reply to the Office action was timely submitted. Accordingly, petitioner does not dispute that the application is not abandoned. Where there is no dispute as to whether an application is abandoned (e.g., the applicant's contentions merely involve the cause of abandonment), a petition under 37 CFR 1.137 (accompanied by the appropriate petition fee) is necessary to revive the abandoned application.

Alternative Venue

In the alternative, petitioner has requested the above petition be treated under 37 CFR 1.137(b).

A grantable petition under 37 CFR §1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR §1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR §1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR §1.137(c). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR §1.137 was unintentional, the Director may require additional information. See MPEP 711.03 (c)(III)(C) and (D).

The requirements for a grantable petition under 37 CFR §1.137(b) have been met. This petition is hereby **Granted**.

The change of address has been entered and made of record.

This application is being forwarded to Technology Center 2600 for further processing.

Telephone inquiries concerning this matter should be directed to the undersigned at (571) 272-3215.



Charlema R. Grant
Petitions Attorney
Office of Petitions